

REFERENCE TITLE: government construction; project delivery methods

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1193

Introduced by
Senator Huppenthal

AN ACT

AMENDING SECTIONS 34-603 AND 48-914, ARIZONA REVISED STATUTES; AMENDING TITLE 48, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 48-967; RELATING TO GOVERNMENT CONSTRUCTION PROJECT DELIVERY METHODS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 34-603, Arizona Revised Statutes, is amended to
3 read:

4 34-603. Procurement of professional services and
5 construction-manager-at-risk, design-build and
6 job-order-contracting construction services:
7 definition

8 A. Except for services an agent procures pursuant to section 34-103 or
9 34-604, an agent shall procure the following services pursuant to this
10 section:

- 11 1. Architect services.
- 12 2. Construction-manager-at-risk construction services.
- 13 3. Design-build construction services.
- 14 4. Engineer services.
- 15 5. Job-order-contracting construction services.
- 16 6. Landscape architect services.
- 17 7. Assayer services.
- 18 8. Geologist services.
- 19 9. Land surveying services.

20 B. An agent shall provide notice of each procurement of professional
21 services or construction services specified in this section and shall award
22 contracts on the basis of demonstrated competence and qualifications for the
23 type of professional services or construction services pursuant to the
24 procedures prescribed in this section.

25 C. In the procurement of professional services or construction
26 services pursuant to this section:

27 1. An agent shall issue a request for qualifications for each contract
28 and publish notice of the request for qualifications. This notice shall be
29 published by advertising in a newspaper of general circulation in the county
30 in which the agent is located for two consecutive publications if it is a
31 weekly newspaper or for two publications that are at least six but no more
32 than ten days apart if it is a daily newspaper. The request for
33 qualifications shall:

34 (a) Include the number of persons or firms to be included on the final
35 list. In a request for qualifications for a horizontal construction project,
36 at least three but not more than five persons or firms shall be on the final
37 list. In all other requests for qualifications, three persons or firms shall
38 be on the final list.

39 (b) State the criteria to be used by the selection committee to select
40 the person or firm to perform the professional services or the construction
41 services. The request for qualifications shall also state in a manner
42 determined by the agent the relative weight of the selection criteria and, if
43 required under paragraph 7, subdivision (b) of this subsection, that one of
44 the criteria will be the person's or firm's subcontractor selection plan or
45 procedures to implement the agent's subcontractor selection plan.

1 (c) If the agent will hold interviews as part of the selection
2 process, state that interviews shall be held with at least three and no more
3 than five persons or firms, except that if multiple contracts are being
4 procured under a single request for qualifications solicitation under this
5 subsection or a single request for qualifications and request for proposals
6 solicitation under this subsection and subsection F of this section, the
7 number to be interviewed shall be at least three and not more than the number
8 of contracts plus two.

9 2. An agent shall initiate an appropriately qualified selection
10 committee for each request for qualifications. If the agent is procuring
11 professional services, the agent shall determine the number and
12 qualifications of the selection committee members. A selection committee for
13 the procurement of construction services shall not have more than seven
14 members, except that, if the contract involves the agent and additional
15 governmental or private participants, the number of members of the selection
16 committee shall be increased by one for each additional participant, except
17 that the maximum number of members of the selection committee is nine. The
18 selection committee for construction services shall include at least one
19 person who is a senior management employee of a licensed contractor and one
20 person who is an architect or an engineer who is registered pursuant to
21 section 32-121. These members may be employees of the agent or outside
22 consultants. Outside contractors, architects and engineers serving on a
23 selection committee shall not receive compensation from the agent for
24 performing this service, but the agent may elect to reimburse outside
25 contractors, architects and engineers for travel, lodging and other expenses
26 incurred in connection with service on a selection committee. A person who
27 is a member of a selection committee shall not be a contractor under a
28 contract awarded under the procurement or provide construction, construction
29 services, materials or services under the contract. The selection committee
30 shall:

31 (a) Evaluate the statements of qualifications and performance data
32 that are submitted in response to the agent's request for qualifications.

33 (b) If determined by the agent and included by the agent in the
34 request for qualifications, conduct interviews with the number of persons or
35 firms to be interviewed as stated in the request for qualifications regarding
36 the professional services or construction services and the relative methods
37 of approach for furnishing the required professional services or construction
38 services.

39 (c) After any interviews, in order of preference, based on the
40 criteria and the weighting of criteria included in the request for
41 qualifications, select a final list for each contract of persons or firms the
42 selection committee deems to be the most qualified to provide the
43 professional services or construction services and, in the case of a contract
44 that will be negotiated under subsection E of this section, rank the persons
45 or firms on the final list in order of preference. The selection committee

1 shall base the selection of the final list and the order of preference on
2 demonstrated competence and qualifications only. If the request for
3 qualifications solicited multiple contracts, the selection committee shall
4 select a separate final list for each contract, except that if multiple
5 contracts are being procured and if the request for qualifications specified
6 that all of the multiple contracts will be awarded to a single contractor,
7 the selection committee may select a single final list for all of the
8 multiple contracts. The number of persons or firms on the final list shall
9 be the number of persons or firms specified in the request for
10 qualifications, except that:

11 (i) If a smaller number of responsive and responsible persons or firms
12 respond to the solicitation, the agent may elect to have the selection
13 committee proceed with the selection process, including interviews and the
14 final list, with the remaining persons or firms if at least two persons or
15 firms remain or the agent may readvertise pursuant to this subsection as the
16 agent deems necessary or appropriate.

17 (ii) If only one responsive and responsible person or firm responds to
18 a solicitation for a contract or multiple contracts to be negotiated pursuant
19 to subsection E of this section, the agent may elect to proceed with only one
20 person or firm in the selection process and may award the contract or
21 contracts to a single person or firm if the agent determines in writing that
22 the fee negotiated pursuant to subsection E of this section is fair and
23 reasonable and that either other prospective persons or firms had reasonable
24 opportunity to respond or there is not adequate time for a resolicitation.

25 (iii) If a person or firm on the final list withdraws or is removed
26 from the selection process and the selection committee determines that it is
27 in the best interest of the agent, the selection committee may replace that
28 person or firm with another person or firm that submitted qualifications and
29 that is selected by the selection committee as the next most qualified.

30 (d) Base the selection of the final list and order of preference on
31 the final list on demonstrated competence and qualifications only.

32 3. Except for construction-manager-at-risk construction services for
33 horizontal construction and design-build construction services for horizontal
34 construction, an agent may procure multiple contracts for professional
35 services, construction-manager-at-risk construction services, design-build
36 construction services or job-order-contracting construction services under a
37 single request for qualifications solicitation under this subsection or, for
38 job-order-contracting construction services or design-build construction
39 services, under a single request for qualifications and request for proposals
40 solicitation under this subsection and subsection F of this section. If an
41 agent does this:

42 (a) The advertisement and the request for qualifications shall state
43 that multiple contracts may or will be awarded, shall state the number of
44 contracts that may or will be awarded and shall describe the services to be
45 performed under each contract.

1 (b) There shall be a single selection process for all of the multiple
2 contracts, except that for each contract there shall be a separate final list
3 and a separate negotiation under subsection E of this section or a separate
4 request for proposals competition under subsection F of this section.
5 However, if the request for qualifications specifies that all of the multiple
6 contracts will be awarded to a single contractor, there may be a single final
7 list and a single negotiation for all of the multiple contracts under
8 subsection E of this section or a single request for proposals competition
9 under subsection F of this section.

10 (c) The agent may award all of the multiple contracts to one
11 contractor or may award the multiple contracts to multiple contractors.

12 4. For professional services, an agent may procure multiple contracts
13 using a single request for qualifications solicitation under this subsection,
14 except that professional services that are part of design-build construction
15 services may not be procured under this paragraph. Each of the multiple
16 contracts for professional services must have a term not exceeding five years
17 and may continue in effect after the five year term for professional services
18 on projects commenced within the five year term.

19 5. An agent may procure multiple contracts for job-order-contracting
20 construction services using a single request for qualifications solicitation
21 under this subsection or using a single request for qualifications and
22 request for proposals solicitation under this subsection and subsection F of
23 this section.

24 6. Except for horizontal construction, an agent may procure multiple
25 contracts for construction-manager-at-risk construction services or for
26 design-build construction services using a single request for qualifications
27 solicitation under this subsection or for design-build construction services
28 using a single request for qualifications and request for proposals
29 solicitation under this subsection and subsection F of this section but in
30 either case only for a specific single project. Portions of the specific
31 single project shall be allocated to separate contracts.

32 7. For construction-manager-at-risk construction services,
33 design-build construction services and job-order-contracting construction
34 services if the contract will be negotiated under subsection E of this
35 section or for job-order-contracting construction services if the contract
36 will be awarded pursuant to subsection F of this section:

37 (a) The person or firm selected to perform the construction services
38 must select subcontractors based on qualifications alone or on a combination
39 of qualifications and price and shall not select subcontractors based on
40 price alone. A qualifications and price selection may be a single step
41 selection based on a combination of qualifications and price or a two step
42 selection. In a two step selection, the first step shall be based on
43 qualifications alone and the second step may be based on a combination of
44 qualifications and price or on price alone.

1 (b) The agent shall include in the request for qualifications either:
2 (i) A requirement that each person or firm submit a proposed
3 subcontractor selection plan, a requirement that the proposed subcontractor
4 selection plan must select subcontractors based on qualifications alone or on
5 a combination of qualifications and price and shall not select subcontractors
6 based on price alone and, as a selection criteria under the request for
7 qualifications, an evaluation of each person's or firm's proposed
8 subcontractor selection plan.
9 (ii) A subcontractor selection plan adopted by the agent that will
10 apply to the person or firm that is selected to perform the construction
11 services and that requires subcontractors to be selected based on
12 qualifications alone or on a combination of qualifications and price and not
13 based on price alone, a requirement that each person or firm must submit a
14 description of the procedures it proposes to use to carry out the agent's
15 subcontractor selection plan and, as a selection criteria under the request
16 for qualifications, an evaluation of each person's or firm's proposed
17 procedures to carry out the agent's subcontractor selection plan.
18 (c) The agent shall include in its contract with the selected person
19 or firm either:
20 (i) If the agent included its subcontractor selection plan in the
21 request for qualifications, the agent's subcontractor selection plan and the
22 procedures proposed by the selected person or firm in submitting its
23 qualifications with those modifications to the procedures as the agent and
24 the selected person or firm agree.
25 (ii) If the agent did not include its subcontractor selection plan in
26 the request for qualifications, the subcontractor selection plan proposed by
27 the selected person or firm in submitting its qualifications with those
28 modifications as the agent and the selected person or firm agree.
29 (d) In making the selection of subcontractors, the person or firm
30 selected to perform the construction services shall use the subcontractor
31 selection plan and any procedures included in its contract.
32 8. The agent and the selection committee shall not request or consider
33 fees, price, man-hours or any other cost information at any point in the
34 selection process under this subsection or subsection D of this section,
35 including the selection of the persons or firms to be interviewed, the
36 selection of the persons or firms to be on the final list, in determining the
37 order of preference of persons or firms on the final list or for any other
38 purpose in the selection process.
39 9. For construction-manager-at-risk construction services and
40 design-build construction services, the contract or contracts under a single
41 request for qualifications solicitation or for design-build construction
42 services a single request for qualifications and request for proposals
43 solicitation shall be limited to a specific single project.

D. An agent shall award a contract for professional services or for construction services to one of the persons or firms on the final list for that contract prepared pursuant to subsection C of this section as provided in subsection E or F of this section, except that, if fewer than the number of persons or firms on the final list respond to the request for proposals pursuant to subsection F of this section but at least two persons or firms on the final list submit responsive proposals or if one or more of the persons or firms on the final list drop out of the selection process pursuant to subsection E or F of this section:

1. If there are three or more remaining persons or firms, the agent shall proceed with the selection process.

2. If there are only two remaining persons or firms, as the agent deems necessary and appropriate, the agent may elect to proceed with the selection process with the two persons or firms or may elect to terminate the selection process and may elect to readvertise pursuant to subsection C of this section.

3. If there is only one remaining person or firm, the agent may award the contract to a single person or firm if the agent determines in writing that the fee negotiated pursuant to subsection E of this section is fair and reasonable and that either other prospective persons or firms had reasonable opportunity to respond or there is not adequate time for a resolicitation.

E. For each contract included in the request for qualifications, the agent shall enter into separate negotiations for the contract with the highest qualified person or firm on the final list for that contract determined pursuant to subsection C of this section for the professional services or for the construction services. However, if the request for qualifications is for multiple contracts and specifies that all of the multiple contracts will be awarded to a single contractor, there may be a single negotiation for all of the multiple contracts. The negotiations shall include consideration of compensation and other contract terms that the agent determines to be fair and reasonable to the agent. In making this decision, the agent shall take into account the estimated value, the scope, the complexity and the nature of the professional services or construction services to be rendered. If the agent is not able to negotiate a satisfactory contract with the highest qualified person or firm on the final list, at compensation and on other contract terms the agent determines to be fair and reasonable, the agent shall formally terminate negotiations with that person or firm. The agent may undertake negotiations with the next most qualified person or firm on the final list in sequence until an agreement is reached or a determination is made to reject all persons or firms on the final list. If a contract for construction services is entered into pursuant to this subsection:

1. If the contract is for construction-manager-at-risk construction services and includes preconstruction services by the contractor or if the contract is for design-build construction services, the agent shall enter

1 into a written contract with the contractor for preconstruction services
 2 under which contract the agent shall pay the contractor a fee for
 3 preconstruction services in an amount agreed by the agent and the contractor,
 4 and the agent shall not request or obtain a fixed price or a guaranteed
 5 maximum price for the construction from the contractor or enter into a
 6 construction contract with the contractor until after the agent has entered
 7 into the written contract for preconstruction services and a preconstruction
 8 services fee.

9 2. Construction shall not commence until the agent and contractor
 10 agree in writing on either a fixed price that the agent will pay for the
 11 construction to be commenced or a guaranteed maximum price for the
 12 construction to be commenced.

13 F. As an alternative to subsection E of this section, an agent may
 14 award design-build construction services or job-order-contracting
 15 construction services as follows:

16 1. The agent shall use the selection committee appointed for the
 17 request for qualifications pursuant to subsection C of this section.

18 2. The agent shall issue a request for proposals to the persons or
 19 firms on the final list developed pursuant to subsection C of this section.

20 3. For design-build construction services and job-order-contracting
 21 construction services, the request for proposals shall include:

22 (a) The agent's project schedule and project final design and
 23 construction budget or life cycle budget for a procurement that includes
 24 maintenance services or operations services.

25 (b) A statement that the contract or contracts will be awarded to the
 26 offeror whose proposal receives the highest number of points under a scoring
 27 method.

28 (c) A description of the scoring method, including a list of the
 29 factors in the scoring method and the number of points allocated to each
 30 factor. The factors in the scoring method shall include:

31 (i) For design-build construction services only, demonstrated
 32 compliance with the design requirements.

33 (ii) Offeror qualifications.

34 (iii) Offeror financial capacity.

35 (iv) Compliance with the agent's project schedule.

36 (v) For design-build construction services only, if the request for
 37 proposals specifies that the agent will spend its project budget and not more
 38 than its project budget and is seeking the best proposal for the project
 39 budget, compliance of the offeror's price or life cycle price for
 40 procurements that include maintenance services, operations services or
 41 finance services with the agent's budget as prescribed in the request for
 42 proposals.

43 (vi) For design-build construction services if the request for
 44 proposals does not contain the specifications prescribed in item (v) and for
 45 job-order-contracting construction services, the price or life cycle price

for procurements that include maintenance services, operations services or finance services.

(vii) An offeror quality management plan.

(viii) Other evaluation factors as determined by the agent, if any.

(d) For design-build construction services only, the design requirements.

(e) A requirement that each offeror submit separately a technical proposal and a price proposal and that the offeror's entire proposal be responsive to the requirements in the request for proposals. For design-build construction services, the price in the price proposal shall be a fixed price or a guaranteed maximum price.

(f) A statement that in applying the scoring method the selection committee will separately evaluate the technical proposal and the price proposal and will evaluate and score the technical proposal before opening the price proposal.

(g) If the agent conducts discussions pursuant to paragraph 5 of this subsection, a statement that discussions will be held and a requirement that each offeror submit a preliminary technical proposal before the discussions are held.

4. If the agent determines to conduct discussions pursuant to paragraph 5 of this subsection, each offeror shall submit a preliminary technical proposal to the agent before those discussions are held.

5. If determined by the agent and included by the agent in the request for proposals, the selection committee shall conduct discussions with all persons or firms that submit preliminary technical proposals. Discussions shall be for the purpose of clarification to ~~assure~~ ENSURE full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and for clarification by the owner. Revision of preliminary technical proposals shall be permitted after submission of preliminary technical proposals and before award for the purpose of obtaining best and final proposals. In conducting any discussions, information derived from proposals submitted by competing offerors shall not be disclosed to other competing offerors.

6. After completion of any discussions pursuant to paragraph 5 of this subsection or if no discussions are held, each offeror shall submit separately the offeror's final technical proposal and its price proposal.

7. Before opening any price proposal, the selection committee shall open the final technical proposals, evaluate the final technical proposals and score the final technical proposals using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.

8. After completion of the evaluation and scoring of all final technical proposals, the selection committee shall open the price proposals, evaluate the price proposals, score the price proposals and complete the scoring of the entire proposals using the scoring method in the request for

proposals. No other factors or criteria may be used in the evaluation and scoring.

9. The agent shall award the contract or contracts to the responsive and responsible offeror whose proposal receives the highest score under the method of scoring in the request for proposals. No other factors or criteria may be used in the evaluation.

10. The contract or contracts file shall contain the basis on which the award is made.

11. For design-build construction services only, the agent shall award a stipulated fee equal to a percentage, as prescribed in the request for proposals, of the agent's project final design and construction budget, as prescribed in the request for proposals, but not less than two-tenths of one per cent of the project final design and construction budget to each final list offeror who provides a responsive, but unsuccessful, proposal. If the agent does not award a contract, all responsive final list offerors shall receive the stipulated fee based on the owner's estimate of the project final design and construction budget as included in the request for proposals. The agent shall pay the stipulated fee to each offeror within ninety days after the award of the initial contract or the decision not to award a contract. In consideration for paying the stipulated fee, the agent may use any ideas or information contained in the proposals in connection with any contract awarded for the project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the unsuccessful offerors. Notwithstanding the other provisions of this paragraph, an unsuccessful final list offeror may elect to waive the stipulated fee. If an unsuccessful final list offeror elects to waive the stipulated fee, the agent may not use ideas and information contained in the offeror's proposal, except that this restriction does not prevent the agent from using any idea or information if the idea or information is also included in a proposal of an offeror that accepts the stipulated fee.

G. Until an award and execution of a contract by an agent, only the name of each person or firm on the final list developed pursuant to subsection C of this section may be made available to the public. All other information received by the agent in response to the request for qualifications or contained in the proposals shall be confidential in order to avoid disclosure of the contents that may be prejudicial to competing offerors during the selection process. The proposals shall be open to public inspection after the contract is awarded and the agent has executed the contract. To the extent that the offeror designates and the agent concurs, trade secrets and other proprietary data contained in a proposal remain confidential.

H. An agent may cancel a request for qualifications or a request for proposals or reject in whole or in part any or all proposals as specified in the solicitation if it is in the best interest of the agent. The agent shall make the reasons for cancellation or rejection part of the contract file.

1 I. Notwithstanding any other law:

2 1. The contractor for design-build or job-order-contracting
3 construction services is not required to be registered to perform design
4 services pursuant to title 32, chapter 1 if the person or firm actually
5 performing the design services on behalf of the contractor is appropriately
6 registered.

7 2. The contractor for construction-manager-at-risk, design-build or
8 job-order-contracting construction services shall be licensed to perform
9 construction pursuant to title 32, chapter 10.

10 3. For each project for horizontal construction under a design-build
11 or construction-manager-at-risk construction services contract, the licensed
12 contractor performing the contract shall perform, with the contractor's own
13 organization, construction work that amounts to not less than forty-five per
14 cent of the total contract price for construction. For the purposes of this
15 paragraph, the total contract price for construction does not include the
16 cost of preconstruction services, design services or any other related
17 services or the cost to procure any right-of-way or other cost of
18 condemnation.

19 4. There shall be a separate request for qualifications under
20 subsection C of this section for each contract for horizontal construction
21 construction-manager-at-risk construction services or horizontal construction
22 design-build construction services.

23 J. For job-order-contracting construction services only:

24 1. The maximum dollar amount of an individual job order shall be one
25 million dollars or such higher or lower amount prescribed by the agent in an
26 action noticed pursuant to title 38, chapter 3, article 3.1 or a rule adopted
27 by the agent as the maximum amount of an individual job order. Requirements
28 shall not be artificially divided or fragmented in order to constitute a job
29 order that satisfies this requirement.

30 2. If the contractor subcontracts or intends to subcontract part or
31 all of the work under a job order and if the job order construction services
32 contract includes descriptions of standard individual tasks, standard unit
33 prices for standard individual tasks and pricing of job orders based on the
34 number of units of standard individual tasks in the job order:

35 (a) The contractor has a duty to deliver promptly to each
36 subcontractor invited to bid a coefficient to the contractor to do all or
37 part of the work under one or more job orders:

38 (i) A copy of the descriptions of all standard individual tasks on
39 which the subcontractor is invited to bid.

40 (ii) A copy of the standard unit prices for the individual tasks on
41 which the subcontractor is invited to bid.

42 (b) If not previously delivered to the subcontractor, the contractor
43 has a duty to deliver promptly the following to each subcontractor invited to
44 or that has agreed to do any of the work included in any job order:

(i) A copy of the description of each standard individual task that is included in the job order and that the subcontractor is invited to perform.

(ii) The number of units of each standard individual task that is included in the job order and that the subcontractor is invited to perform.

(iii) The standard unit price for each standard individual task that is included in the job order and that the subcontractor is invited to perform.

~~K. Notwithstanding anything to the contrary in this chapter, an agent shall not procure any horizontal construction using the construction-manager-at-risk, design-build or job-order contracting method of project delivery after June 30, 2010. For purposes of this paragraph, an agent procures horizontal construction when the contract for the construction services is executed by the agent and the contractor for the construction-manager-at-risk, design-build or job-order contracting construction services. If a contract is executed for construction services on or before June 30, 2010, construction services under the contract may be rendered in whole or in part after June 30, 2010.~~

~~L.~~ K. Notwithstanding anything to the contrary in this section or this title, an agent shall not:

1. Enter into a contract as contractor to provide construction-manager-at-risk construction services, design-build construction services or job-order-contracting construction services.

2. Contract with itself, with another agent, with this state or with any other governmental unit of this state or the federal government for the agent to provide construction-manager-at-risk construction services, design-build construction services or job-order-contracting construction services.

~~M.~~ L. The prohibitions prescribed in subsection ~~L.~~ K of this section do not prohibit an agent from providing construction for itself as provided by law.

~~N.~~ M. The agent shall include in each contract for construction services the full street or physical address of each separate location at which the construction will be performed and a requirement that the contractor and each subcontractor at any level include in each of its subcontracts the same address information. The contractor and each subcontractor at any level shall include in each subcontract the full street or physical address of each separate location at which construction work will be performed.

~~O.~~ N. For the purposes of this section, "professional services" includes architect services, engineer services, landscape architect services, assayer services, geologist services and land surveying services and any combination of those services.

1 Sec. 2. Section 48-914, Arizona Revised Statutes, is amended to read:
 2 48-914. Plans; specifications; estimate of cost; limitation on
 3 assessment

4 Before passing the resolution of intention, ~~plans and specifications~~
 5 PRELIMINARY PLANS THAT SHOW THE LOCATION AND THE TYPE AND CHARACTER OF THE
 6 PROPOSED IMPROVEMENTS and estimates of the cost and expenses thereof shall be
 7 prepared by the engineer and filed with the clerk. The assessment for any
 8 lot shall not exceed its proportion of the estimate.

9 Sec. 3. Title 48, chapter 6, article 1, Arizona Revised Statutes, is
 10 amended by adding section 48-967, to read:

11 48-967. Alternate project delivery methods

12 A. AS AN ALTERNATIVE TO THE METHODS DESCRIBED IN THIS ARTICLE FOR THE
 13 PROCUREMENT OF DESIGN SERVICES, CONSTRUCTION AND CONSTRUCTION SERVICES, THE
 14 BOARD OF DIRECTORS MAY ELECT TO PROCURE DESIGN SERVICES, CONSTRUCTION AND
 15 CONSTRUCTION SERVICES, AS APPLICABLE, UNDER ANY OF THE FOLLOWING PROJECT
 16 DELIVERY METHODS:

17 1. DESIGN-BID-BUILD, WHICH MAY INCLUDE PROCURING DESIGN SERVICES AS
 18 PROVIDED BY TITLE 34, CHAPTER 1, ARTICLE 1 AND CONSTRUCTION BY COMPETITIVE
 19 SEALED BIDDING PURSUANT TO TITLE 34, CHAPTER 2, ARTICLES 1, 2 AND 3.

20 2. CONSTRUCTION-MANAGER-AT-RISK, DESIGN-BUILD AND JOB-ORDER-
 21 CONTRACTING PROJECT DELIVERY METHODS PURSUANT TO TITLE 34, CHAPTER 6.

22 B. IF THE BOARD OF DIRECTORS DOES NOT INCLUDE DESIGN SERVICES IN THE
 23 CONSTRUCTION-MANAGER-AT-RISK OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES
 24 CONTRACT, THE BOARD OF DIRECTORS MAY PROCURE ANY DESIGN SERVICES RELATING TO
 25 THE CONSTRUCTION-MANAGER-AT-RISK OR JOB-ORDER-CONTRACTING CONSTRUCTION
 26 PROJECTS PURSUANT TO SECTION 34-103 OR 34-603, AS APPLICABLE.

27 C. IF THE COSTS OF THE PROJECT ARE TO BE ASSESSED TO PROPERTY IN THE
 28 DISTRICT, THE BOARD OF DIRECTORS SHALL FOLLOW AS NEARLY AS PRACTICABLE THE
 29 PROCEDURES PROVIDED IN THIS ARTICLE EXCEPT:

30 1. DESIGN SERVICES MAY BE PERFORMED BY ONE OR MORE OTHER PERSONS
 31 SELECTED UNDER THIS SECTION AND THE COMPENSATION OF ANY PERSON SELECTED TO
 32 PROVIDE DESIGN SERVICES UNDER THIS SECTION MAY BE INCLUDED AS AN INCIDENTAL
 33 EXPENSE OF THE PROJECT.

34 2. IN THE RESOLUTION OF INTENTION, THE BOARD OF DIRECTORS SHALL
 35 DESCRIBE ITS INTENT TO USE AN ALTERNATE PROJECT DELIVERY METHOD PURSUANT TO
 36 THIS SECTION AND SHALL GIVE NOTICE OF THAT INTENT IN THE NOTICE REQUIRED BY
 37 SECTION 48-916.

38 3. THE SUPERINTENDENT IS NOT REQUIRED TO INVITE SEALED BIDS UNDER
 39 SECTIONS 48-919 AND 48-922 OR PUBLISH OR POST NOTICE AT THE PASSAGE OF THE
 40 RESOLUTION ORDERING THE WORK AND INVITING SEALED BIDS UNDER SECTION 48-919,
 41 AND THE BOARD OF DIRECTORS IS NOT REQUIRED TO PROCESS BIDS OR AWARD THE
 42 CONTRACT TO THE LOWEST AND BEST RESPONSIBLE BIDDER UNDER SECTION 48-922.

43 4. ALTERNATIVE PLANS MAY BE PROVIDED FOR THROUGH THE ALTERNATE
 44 PROCUREMENT METHOD.

1 5. THE BOARD OF DIRECTORS MAY SELECT THE PROVIDER OF CONSTRUCTION AND
2 CONSTRUCTION SERVICES BEFORE THE ADOPTION OF THE RESOLUTION OF INTENTION OR
3 THE RESOLUTION ORDERING WORK BUT IS NOT BOUND TO PAY FOR CONSTRUCTION OR
4 CONSTRUCTION SERVICES AND SHALL NOT ACCEPT A GUARANTEED MAXIMUM PRICE BEFORE
5 THE ADOPTION OF THE RESOLUTION ORDERING THE IMPROVEMENT UNDER SECTION 48-919.
6 AFTER ADOPTION OF THE RESOLUTION ORDERING THE IMPROVEMENT, THE SUPERINTENDENT
7 AND THE CONTRACTOR SHALL DETERMINE A PROPOSED GUARANTEED MAXIMUM PRICE FOR
8 THE WORK UNDER THE CONTRACT. THE NOTICE REQUIRED BY SECTION 48-923 SHALL BE
9 PUBLISHED AFTER THE DETERMINATION AND SHALL INCLUDE THE PROPOSED GUARANTEED
10 MAXIMUM PRICE AND, IF ALTERNATIVE PLANS HAVE BEEN PROVIDED FOR, THE NOTICE
11 SHALL INCLUDE THE GUARANTEED MAXIMUM PRICE FOR EACH ALTERNATIVE PLAN. WITHIN
12 TWENTY DAYS AFTER THE DATE OF THE FIRST PUBLICATION, IF NO OBJECTIONS HAVE
13 BEEN FILED PURSUANT TO SECTION 48-923, SUBSECTION B, THE DISTRICT MAY ACCEPT
14 THE GUARANTEED MAXIMUM PRICE. ANY CONTRACT FOR CONSTRUCTION IS VOID AND OF
15 NO EFFECT IF THE BOARD OF DIRECTORS UPHOLDS AN OBJECTION AND ABANDONS THE
16 PROCEEDING PURSUANT TO SECTION 48-923, SUBSECTION B. IF ALTERNATIVE PLANS
17 HAVE BEEN PROVIDED FOR AND THE NOTICE INCLUDES THE GUARANTEED MAXIMUM PRICE
18 FOR EACH ALTERNATIVE PLAN, AND, IF WITHIN THE FIFTEEN DAY PERIOD AFTER THE
19 DATE OF THE FIRST PUBLICATION, THE OWNERS OF A MAJORITY OF THE FRONTAGE OF
20 PROPERTY FRONTING THE PROPOSED IMPROVEMENT, OR, IF THE COST OF THE
21 IMPROVEMENT HAS BEEN MADE CHARGEABLE ON AN ASSESSMENT DISTRICT, THE OWNERS OF
22 A MAJORITY OF THE FRONTAGE OF PROPERTY CONTAINED WITHIN THE LIMITS OF THE
23 ASSESSMENT DISTRICT, IN WRITING REQUIRE THAT THE PROPOSED IMPROVEMENT BE
24 CONSTRUCTED PURSUANT TO ANY PARTICULAR ONE OF THE ALTERNATIVE PLANS AND
25 SPECIFICATIONS, THEN THE BOARD OF DIRECTORS SHALL SO DETERMINE, REQUIRE AND
26 ACCEPT THE GUARANTEED MAXIMUM PRICE FOR THAT ALTERNATIVE.

27 6. THE PROVIDER OF CONSTRUCTION OR CONSTRUCTION SERVICES SHALL PROVIDE
28 THE ONE HUNDRED PER CENT PAYMENT AND PERFORMANCE BONDS ON DISTRICT ACCEPTANCE
29 OF THE GUARANTEED MAXIMUM PRICE.

30 7. THE ASSESSMENT SHALL NOT BE RECORDED UNTIL AFTER ACCEPTANCE OF THE
31 GUARANTEED MAXIMUM PRICE.

32 8. THE PAYMENT AND RETENTION PROVISIONS OF SECTION 48-935, SUBSECTION
33 G APPLY TO ALL CONTRACTS FOR CONSTRUCTION AND CONSTRUCTION SERVICES
34 REGARDLESS OF THE PROCUREMENT METHOD.